

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4120 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO
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SARUYABEN HARISINGBHAI BILWAL

Versus

ATAULLAHKHAN MEHTABKHAN

LALKHAN PATHAN

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Appearance:

MR MTM HAKIM for appellants

MS MEGHA JANI for Respondent No. 3

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CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE D.A.MEHTA

Date of decision: 21/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

This appeal under the Motor Vehicles Act is directed against the judgment and order dated 25th March

1998 passed by the Motor Accident Claims Tribunal (Aux.IV), Kheda at Nadiad in MACP No. 368/88 whereby while partly allowing the claim, the Tribunal has directed the opponents to pay a sum of Rs.2,47,000/- with interest thereon at the rate of 12% per annum from the date of the petition till realisation within two months and also proportionate costs jointly and severally to the applicants. This appeal is at the instance of the claimants for enhancement of the amount of compensation and it is given out that the opponents have not challenged this award.

2. Briefly stated, the facts of the case are that the accident took place on 2nd January 1988 when the deceased Harisinh Bilwal was going on Scooter No.GUS-5961 along with the pillion rider and there was a collision between the said scooter and the truck No.GQG-6316 on Kheda Highway in the sim of village Vanoti between Thasara and Dakor. The accident took place at about 5.00 p.m. and in this accident, the scooter driver Harisinh Bilwal as also the pillion rider expired. The Claim Petition No.368/88 was filed by heirs of the scooter driver Harisinh Bilwal and Claim Petition No.334/88 was filed by the heirs of the pillion rider, claiming compensation of Rs.11,30,000/- and Rs.7,00,000/ respectively.

3. The claimants in Claim Petition No.368/88 have come up before this Court in this appeal. The main challenge is against the quantum and Mr.M.T.M.Hakim appearing on behalf of the appellants claimants has urged that the amount of Rs.2,47,000/- as has been awarded by the Tribunal is too meagre and is not based on the correct appreciation of the evidence which has come on record.

4. Ms.Jani appearing on behalf of the respondent Insurance Company has opposed the appeal. She has submitted that the amount of compensation has been correctly determined by the Tribunal and the income of the deceased could not have been taken to be more than Rs.1,500/- per month in view of the fact that as per his own pay scale, he was getting Rs.1,334/- only at the time of the accident.

5. Harisinh Bilwal was a member of the ST community and it has been proved that he was working as a Clerk in the office of the Mamlatdar at Thasara and at the time of accident, he was getting Rs.1,357/- per month and he had passed the Departmental Examination and had he not died, he would have been promoted as a Dy.Mamlatdar in the same

year. The certificate Exh.40 and the deposition of Manibhai Vaghela at Exh.50 who was the colleague of the deceased it has come on record that 11 persons had already received promotion and the witness Manibhai Vaghela himself was getting a sum of Rs.4,700/- per month at the time when he made the deposition before the Tribunal. One Motibhai Dabhi at Exh.54 who was examined at Exh.56 has also produced the evidence at Exh.53 and has submitted five certificates and had also produced the certificate that the deceased had passed the Departmental Examination and his Number was 203 in the list, at No.202 was one Mr.K.P.Dave and at No.204 was one Mr.Bhabhor. Thus, the deceased being at No.203 would have certainly received the promotion because the candidates at Nos.202 and 204 both were promoted as Dy.Mamlatdar. The document Exh.57 in the form of statement of the salary shows that in the month of Dec.1987, the deceased had been paid Rs.1,334/- and in Dec.1997, his salary would have been Rs.6,717/-. The Tribunal after narrating the case on behalf of the claimants in para 8, has mentioned in para 9 that, "I think that the income of deceased should be calculated at Rs.1,500/- per month". Now this finding according to us is not based on evidence as was made available on behalf of the claimants. We fail to understand as to how the Tribunal thought of the figure of Rs.1,500/- per month only as the income of the deceased. It appears that the future prospective rise in income has not at all been taken into account. It is very clear from the document at Exh.57 issued under the signatures of the Collector, Kheda that in Dec.1997, the salary of the deceased would have been Rs.6,717/-. Therefore, even if we take the mean of Rs.1,334/- in Dec.1987 and Rs.6,717/in Dec.1997, it comes out to be  $\text{Rs.} \frac{8,051}{2} = \text{Rs.} 4,025.50$ . It may also be mentioned that Mr.Hakim has correctly pointed out that there was an increase in the salary of Government employees as a result of the Fifth Pay Commission, the benefit of which was granted from 1.1.1996. This is a fact of which a judicial notice can be taken by the Court. In the case of New India Assurance Co. Ltd. v. Kala Devi and ors., reported in 1996 ACJ 16, the Supreme Court had considered the case of enhancement in the compensation in view of the revision of the pay scales of the post which was held by the deceased on the basis of the Third Pay Commission. In that case, the High Court took into account the revision of pay scales by Third Pay Commission, and awarded a sum of Rs.1,25,000/- as compensation. The Supreme Court observed in the end of this decision that having regard to the revised pay scales of the post held by the deceased, his age and longevity of life as well as all other facts and circumstances of the case, there was

no justification to interfere with the quantum of compensation awarded by the High Court and accordingly the appeal against the decision of the High Court was dismissed. In any view of the matter, the claimants in this case are at least entitled to get compensation by getting the pay of the deceased computed on the basis of the average of the salary which the deceased was getting at the time of accident and as has been certified by the Collector, Kheda, at Exh.57 at the rate of Rs.6,717/= p.m. in Dec.1997. This average comes out to Rs.4,025.50 as explained above and therefore we find that the monthly income of the deceased for the purpose of granting compensation should have been taken to be Rs.4,025.50 per month instead of Rs.1,500/per month.

6. If that be so and we proceed to determine the amount of compensation on the basis of the monthly salary of Rs.4,000/- (rounded off figure) his annual income comes to Rs.48,000/-.

7. Now comes the question as to what is the amount to be considered for the purpose of dependency? Normally, in such cases, 1/3rd of the income is deducted for the maintenance of the deceased. Mr.Hakim has pointed out that it is a case in which there were six members in the family including the deceased himself and apart from it the deceased is survived by three daughters, his widow and his father. Thus, there are five claimants and Mr.Hakim has contended that only 1/6th of the income should be deducted against the maintenance of deceased. Against it, Ms.Jani has resolutely submitted that it is not a case in which any departure should be made from the normal practising of deducting 1/3rd of the income of deceased against his own maintenance.

8. We find that with the death of an earning member, the other liabilities remain as such and this aspect can't be ignored. It also does not appeal to reason that merely because the deceased was an earning member, he would have spent major part of his earnings to the extent of one-third on himself. Earning member's death does not bring about the end of the financial burden of the household of the bereaved family as such and it continues as before except for the bare maintenance amount which the deceased would have spent for himself. All these aspects are germane for the purpose of computing the amount against dependency benefits. A Division Bench of our own High Court in the case of Gujarat State Road Transport Corpn. v. Mer Ranmal Bhima, reported in 1997 ACJ 615 while considering the question of the quantum of compensation in case of fatal accident has observed that

in case of six members of the family including the deceased himself, the deduction of 1/6th amount for personal expenses of the deceased is appropriate and in para 6 of this judgment, it has been observed that when one member of the family departs from this world, the other members in a middle class family would have to spend almost the same amount on other heads like rent and taxes for the house other taxes and expenses on the house owned by the family and looking to the amount which was ordinarily required to be spent on education and upbringing of minor children these days, it cannot be said that only one unit should be taken for a minor child as against two units for an adult. In the present case, when there are five living claimants and out of them, there are three minor daughters, the widow and the father of the deceased, it will not be unreasonable if we take into consideration that at the most the deceased would have spent 1/4th of his pay on himself. Therefore, for the purpose of the dependency benefits, we may take the amount of Rs.4,000/Rs.1,000/- = Rs.3,000/- per month which would come to Rs.48,000/- - Rs.12,000/- = Rs.36,000/-. The Motor Accident Claims Tribunal has applied the multiplier of 18 looking to the age of 32 years of the deceased at the time of the accident and therefore, the amount of compensation against dependency benefits should be Rs.36,000/- x 18 = Rs.6,48,000/-. The amount of compensation of Rs.2,16,000/- against this head is therefore enhanced to that of Rs.6,48,000/-.

9. The Tribunal has also awarded Rs.10,000/- against the loss of consortium, Rs.10,000/- against pain, shock and suffering, Rs.10,000/- against loss of love and affection to children and Rs.1,000/- against transportation and therefore, the total amount of compensation comes out to be Rs.6,48,000/- + Rs.10,000/+ Rs.10,000/- + Rs.10,000/- + Rs.1,000/- = Rs.6,79,000/-. Accordingly, the total amount of compensation is enhanced to Rs.6,79,000/- from that of Rs.2,47,000/-. The other terms with regard to the rate of interest and the proportionate cost etc. shall remain intact as ordered by the Tribunal and the claimants are held to be entitled to receive the amount accordingly. The respondents shall proceed to deposit the amount and in case any amount has already been deposited, the same shall be credited to that extent. The appeal is therefore partly allowed as above with costs.

(M.R. Calla, J.)

(D.A. Mehta, J.)

Sreeram.